

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ERIC R. WESTERFIELD,

Petitioner,

v.

**WARDEN, CHILLICOTHE
CORRECTIONAL INSTITUTION,**

Respondent.

Case No. 2:17-cv-970

Judge Michael H. Watson

Magistrate Judge Deavers

OPINION AND ORDER

On June 7, 2018, the Magistrate Judge issued a Report and Recommendation recommending that this action be transferred to the United States Court of Appeals for the Sixth Circuit as a successive Petition. ECF No. 6. Petitioner has filed an Objection to the Magistrate Judge's Report and Recommendation. ECF No. 9.

Petitioner argues that he has presented a meritorious ground for relief. However, as discussed by the Magistrate Judge, this action plainly constitutes a successive Petition. Petitioner has previously filed two 2254 actions challenging these same underlying criminal convictions. Therefore, this Court lacks jurisdiction to address his claim, absent authorization from the Court of Appeals. 28 U.S.C. § 2244(b)(3)(a).

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the foregoing reasons and for the reasons addressed in the

Magistrate Judge's Report and Recommendation, Petitioner's Objection, ECF No. 9, is **OVERRULED**. The Report and Recommendation, ECF No. 6, is **ADOPTED** and **AFFIRMED**. This action is **TRANSFERRED** to the Sixth Circuit as successive.

Pursuant to Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court now considers whether to issue a certificate of appealability. A state prisoner who seeks a writ of habeas corpus in federal court does not have an automatic right to appeal a district court's adverse decision unless the court issues a certificate of appealability. 28 U.S.C. § 2253(c).

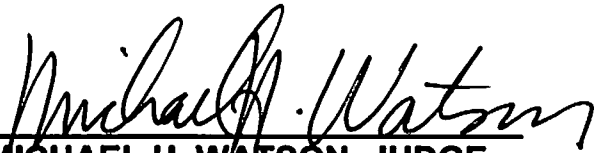
When a claim has been denied on the merits, a certificate of appealability may be issued only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, a petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n.4 (1983)). When a claim has been denied on procedural grounds, a certificate of appealability may be issued if the petitioner establishes that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a

constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

The Court is not persuaded that reasonable jurists would debate whether the Court properly transferred this action to the Sixth Circuit for authorization for filing as a successive Petition. The Court therefore **DECLINES** to issue a certificate of appealability.

The Clerk is **DIRECTED** to enter final **JUDGMENT**.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT